



POLICE DEPARTMENT

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In the Matter of the Disciplinary Proceedings :
- against - : FINAL
Detective Jay Poggi : ORDER
Tax Registry No. 908929 : OF
75 Precinct Detective Squad : DISMISSAL
-----X

Detective Jay Poggi, Tax Registry No. 908929, Shield No. 4902, Social Security No. [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2014-11792, as set forth on form P.D. 468-121, dated May 5, 2014, and after a review of the entire record, has been found Guilty as charged.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Detective Jay Poggi from the Police Service of the City of New York.


WILLIAM J. BRATTON
POLICE COMMISSIONER

EFFECTIVE: ON MAY 23, 2014 @0001hours



POLICE DEPARTMENT

May 14, 2014

-----X
In the Matter of the Charges and Specifications

: Case No. 2014-11792

- against -

Detective Jay Poggi

Tax Registry No. 896663

75 Precinct Detective Squad
-----X

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Robert W. Vinal
Assistant Deputy Commissioner - Trials

APPEARANCE:

For the Department: Javier R. Seymore, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent: Philip Karasyk, Esq.
Karasyk & Moschella, LLP
233 Broadway, 32nd Floor
New York, New York 10007

To:

HONORABLE WILLIAM J. BRATTON
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

The above-named member of the Department appeared before me on May 8, 2014¹, charged with the following:

Disciplinary Case No. 2014-11792

1. Said Detective Jay Poggi, assigned to 75th Precinct Detective Squad, while on duty, inside of One Police Plaza, New York County, on or about May 5, 2014, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Detective Poggi failed to comply with an order to answer questions during an Official Department Interview being held pursuant to Patrol Guide Procedure 206-13.

P.G. 206-13, Page 2, Paragraph 12	INTERROGATIONS OF MEMBERS OF THE SERVICE
P.G. 203-03, Page 1, Paragraph 2	COMPLIANCE WITH ORDERS
P.G. 203-10, Page 1, Paragraph 5	GENERAL REGULATIONS

Respondent, through his attorney, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Robert Flynn as its sole witness.²

¹ Because Respondent filed for service retirement, a conference was held on May 5, 2014, at which the Deputy Commissioner of Trials exercised his authority pursuant to Rules of the City of New York Title 38 §15-03(e)(4) and determined that this trial would proceed on an expedited basis with shortened pre-trial and post-trial proceedings. Respondent did not object to this determination.

² The Assistant Department Advocate attempted to call Respondent as a witness at this trial but Respondent's attorney stated, on Respondent's behalf, that he was refusing to testify.

Sergeant Robert Flynn

Sergeant Flynn, an 11-year member of the service (MOS) who was promoted to the rank of sergeant in 2007, is assigned to the Department's Internal Affairs Bureau (IAB), Group 31, was assigned to conduct an official Department interview of Respondent regarding IAB log number 14-14293. Flynn testified that he was not the assigned investigator regarding this log number and that another IAB "investigator and his group were working the case." He explained that he was asked to conduct the official Department interview of Respondent regarding IAB log number 14-14293 because "a wall was put in place." Flynn testified that in order to conduct the official Department interview of Respondent regarding IAB log number 14-14293, he reviewed the underlying case against Respondent.

The official Department interview of the Respondent was held on May 5, 2014, in the offices of the Chief of IAB, Room 1106, One Police Plaza. Respondent appeared for the interview accompanied by his attorney, Philip Karasyk, and a representative from the Detective's Endowment Association (DEA). Lieutenant Bava was also present. Once everyone was inside the interview room, Flynn stated the date and time of day and then followed the procedures mandated by Patrol Guide Procedure 206 13 by stating the investigation case number and by reading into the record the provisions of both Patrol Guide Procedure 206-13 and Patrol Guide Procedure 203-08 including the warnings that are read to the subject officer. Respondent indicated to Flynn that he understood these warnings.

When Flynn then asked Respondent if he would be willing to answer questions, Respondent's attorney intervened and stated that since Respondent had pending criminal

charges, he would not be answering any questions at the interview. Respondent said nothing but he was looking at his attorney as his attorney made this statement.

Lieutenant Bava then advised Respondent that based on his refusal to answer questions he would be re-suspended at that time. Respondent said nothing.

Lieutenant Bava then asked Respondent if he had any guns in his possession. Respondent told Bava that all of his weapons had been vouchered already. Bava then advised Respondent of the many counseling programs that are offered by the Department. Bava then suspended Respondent for refusing to answer questions at a Patrol Guide hearing.

Flynn testified that he recorded the interview using an Olympus digital recorder. The CD recording of this official Department interview was admitted into evidence [Department's Exhibit (DX) 1].

On cross-examination, Flynn confirmed that during this official Department interview Respondent was at all times respectful to both him and to Bava and to the process by which the interview was conducted.

On further questioning, Flynn confirmed that at the commencement of the interview he had informed Respondent "what the charges were" that he was going to be questioned about and that these charges were being unfit for duty and a firearm discharge.

On the CD recording of Respondent's official Department interview (DX 1), Flynn is heard informing Respondent that he is the subject of a "C case" investigation in which the complainant is "the People of the State of New York" and that on "April 24, 2014" he is alleged to have engaged in "the following misconduct: Driving while

intoxicated, unfit for duty, firearms discharge.” Flynn then asked Respondent if he was satisfied with his legal representative and Respondent answered, “Yes.” Flynn is then heard reading into the record the provisions of Patrol Guide Procedure 206-13:

“I wish to advise you that you are being questioned as part of an official investigation by the Police Department. You will be asked questions specifically directed and narrowly related to the performance of your duties. You are entitled to all the rights and privileges guaranteed by the laws of the State of New York, the Constitution of this state and the Constitution of the United States, including the right not to be compelled to incriminate yourself and the right to have legal counsel present at each and every stage of this investigation. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties, you will be subject to departmental charges, which could result in your dismissal from the Police Department. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceedings. However, these statements may be used against you in relation to subsequent Departmental charges.”

Flynn is then heard citing the provisions of Patrol Guide Procedure 203-08:

“The intentional making of a false official statement is prohibited, and will be subject to disciplinary action, up to and including dismissal. Intentionally making a false official statement regarding a material matter will result in dismissal from the Department, absent exceptional circumstances. Exceptional circumstances will be determined by the Police Commissioner on a case by case basis. Examples of circumstances in which false statements may arise include, but are not limited to, lying under oath during a civil, administrative, or criminal proceeding or in a sworn document; lying during an official Department interview conducted pursuant to Patrol Guide 206-13, “Interrogation of Members of the Service” or an interview pursuant to Patrol Guide 211-14, “Investigations by Civilian Complaint Review Board;” and lying in an official Department document or report. The Department will not bring false official statement charges in situations where, as opposed to creating a false description of events, the member of the Department merely pleads not guilty in a criminal matter, or merely denies a civil claim or an administrative charge of misconduct.”

When Flynn then asked Respondent if he is willing to answer questions, Respondent’s attorney stated that he was advising Respondent not to answer any questions because of a “pending criminal investigation.”

FINDINGS AND ANALYSIS

Respondent is charged with having wrongfully engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by failing to comply with an order to answer questions during an official Department interview that was conducted on May 5, 2014 pursuant to Patrol Guide Procedure 206-13.

Under Patrol Guide Procedure 206-13, Flynn was required to:

2. Inform member concerned of:
 - a. Rank, name and command of person in charge of investigation
 - b. Rank, name and command of interrogating officer
 - c. Identity of all persons present
 - d. Whether he is subject or witness in the investigation, if known
 - e. Nature of accusation
 - f. Identities of witnesses or complainants (address need not be revealed) except those of confidential source or field associate unless they are witnesses to the incident
 - g. Information concerning all allegations.
 - h. The Department's policy regarding making false statements (*see P.G. 203-08*).
3. Permit representative of department line organization to be present at all times during interrogation.
4. Conduct interrogation at reasonable hour, preferably when member is on duty during daytime hours.

It is not disputed that Flynn did all of these things. Thus, the record shows that the official Department interview of the Respondent that was conducted on May 5, 2014, was properly conducted.

Most significantly, the recording (DX 1) corroborates Flynn's testimony that he specifically warned Respondent that if he refused to answer questions, he was subject to disciplinary action and possible dismissal from the Department. Despite this warning, Respondent's attorney stated, on Respondent's behalf and in Respondent's presence, that Respondent would not be answering any questions at the interview because of a "pending criminal investigation." Since Respondent did not protest his attorney's statement and

since Respondent stated that he was satisfied with his legal representation, it is clear that Respondent's attorney was speaking for him. Respondent's attorney's statement that Respondent would not be answering any questions at the interview because of a "pending criminal investigation" does not constitute a valid basis for refusing to answer questions because, as Flynn told Respondent, Patrol Guide Procedure 206 13 specifically states that, "If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceedings."

Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 5, 1983. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

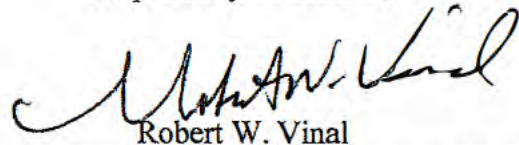
Respondent has been found guilty of willfully refusing to comply with a Lieutenant's lawful order, issued at an official Department interview, that he answer questions narrowly related to specific off duty conduct.

The penalty of dismissal from the Department has consistently been imposed where a member has refused to answer questions posed to the member at an official Department interview. See Disciplinary Case Nos. 60523/87; 66635/92; 70472/95; 72243/97; 72342/97 & 72195/97; 73723/98; 79582/04; and 83167/07.

Here, as in the above cited cases, Respondent was clearly informed at his official Department interview that if he refused to answers questions he was subject to dismissal from the Department. Respondent's attorney noted that "he has had a highly distinguished career" and "has contributed mightily to the safety and well-being of the citizens of this city" and cited specific cases Respondent was involved in including being "instrumental in obtaining the confession" of "[REDACTED]" to the shooting of Police Officer "[REDACTED]". However, Respondent has wrongfully refused to cooperate with this Department's internal investigation of the serious misconduct of driving while intoxicated, being unfit for duty, and a firearms discharge that he is accused of being involved in by refusing to answers questions at his official Department interview even though he was informed that his answers could not be used against him in a criminal prosecution.

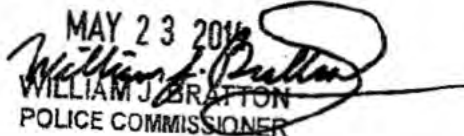
Therefore, I am left with no alternative but to recommend that Respondent be DISMISSED from the New York City Police Department.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner-Trials

APPROVED

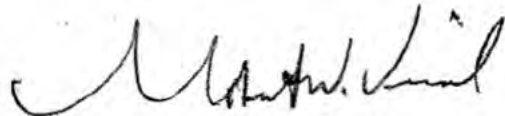
MAY 23 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE JAY POGGI
TAX REGISTRY NO. 908929
DISCIPLINARY CASE NO. 2014-11792

The Respondent received an overall rating of 4.5 on his 2012-2013 performance evaluation, 4.5 on his 2011-2012 evaluation, and 4.5 on his 2010-2011 evaluation. He has no medals. [REDACTED] His only prior formal disciplinary adjudication took place in 1985 when he forfeited a three-day suspension for failing to safeguard a Department radio. His only monitoring records consist of his suspension for the alleged misconduct which was the subject of his May 5, 2014 official Department interview and his suspension for refusing to answer questions at this interview.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner Trials